

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

PAUL R. BURGETT,

Plaintiff,

v.

SEAN SANBORN, JANIE BLUE, and the  
CITY OF COQUILLE, a political  
Subdivision of the State of Oregon,

Defendants.

Case No. 6:13-cv-1358-TC

ORDER

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MCSHANE, Judge:

Magistrate Judge Thomas M. Coffin filed a Findings and Recommendation (ECF No. 62), and the matter is now before this court. *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Plaintiff filed objections to the Findings and Recommendation. Accordingly, I have reviewed the file of this case *de novo*. *See* 28 U.S.C. § 636(b)(1)(c); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9<sup>th</sup> Cir. 1981). I conclude the report is correct.

It is clear Officer Sanborn had reasonable suspicion to pull plaintiff Paul Burgett over. It is also clear that when questioning and administering tests to Burgett, Officer Sanborn obtained

probable cause to arrest Burgett for DUII. Equally clear was Judge Coffin's discussion regarding why plaintiff's proffered evidence, including his two expert reports, fail to create a genuine issue of material fact. Burgett still appears to confuse a failure to convict with the absence of probable cause.

With one exception, I adopt Judge Coffin's Findings and Recommendation. Judge Coffin recommends declining to exercise supplemental jurisdiction over Burgett's state law claim of malicious prosecution. In most cases, I would agree. This case is different. In Oregon, a malicious prosecution claim requires a plaintiff to establish the absence of probable cause. *Teegarden v. State ex rel. Oregon Youth Auth.*, 270 Or. App. 373, 383 (2015). As demonstrated in Judge Coffin's thorough analysis, Sanborn had probable cause to arrest Burgett for DUII. Therefore, Burgett's claim for malicious prosecution necessarily fails. Under these circumstances, it is appropriate to exercise supplemental jurisdiction over the malicious prosecution claim.

I adopt the Findings and Recommendation (ECF No. 62). Defendants' motion for summary judgment, ECF No. 37, is GRANTED.

IT IS SO ORDERED.

DATED this 4th day of August, 2015.

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/s/ Michael J. McShane  
Michael J. McShane  
United States District Judge